SUPREME COURT, U. S.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975
No. 75-560

Dr. Robert B. Burns

Petitioner

v

Dr. Robert D. Decker, President,
Bemidji State University;
Dr. G. Theodore Mitau, Chancellor,
Minnesota State University System;
Dr. Frank G. Chesley, President,
Minnesota State University Board

Respondents

PETITION FOR A WRIT OF CERTIORARI FROM UNITED STATES COURT OF APPEALS EIGHTH CIRCUIT

Petitioner's Reply to the Respondents' Brief in Opposition

BRIEF FOR THE PETITIONER

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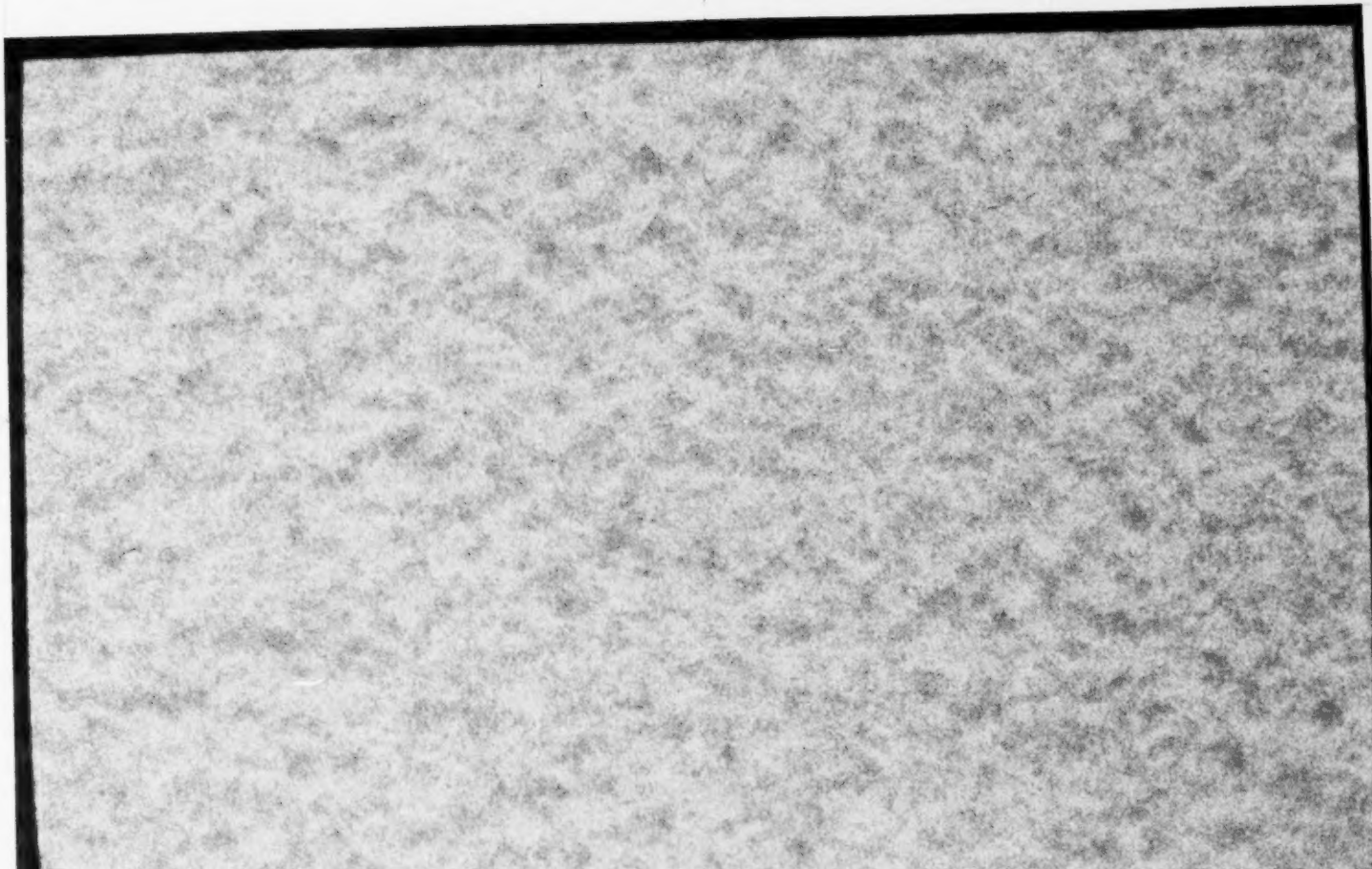

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On Petition for Writ of Certiorari
to the
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PETITIONER'S REPLY TO RESPONDENTS' BRIEF IN OPPOSITION

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Reference is also made
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Refer also References made in Petitioner's Brief under Reasons II pp. 41-47,Argument I, Argument II pp. 54-60.....1

The Respondents' Brief in Argument I makes reference to the Lombard Case. The Harvard Law Review 88:453, 460 in reviewing Lombard noted that Section 1983 derived from the Civil Rights Act of 1871, was born out of an apprehension that state judges would not be dispassionate in adjudicating claims that state officials had violated federal constitutional rights.

The Harvard Law Review noted that in the Lombard Case there was considerable variance from established judicial precedance. The differences in the application of Section 1983 having prior state court judgment have also been extensively noted and discussed in detail regarding suitable guidelines to be used by the courts in numerous other law reviews. (Reference is made to the Petitioner's Brief under Reasons II pp. 41-47).

The constitutional issues on restrictions on Burns' future employment were raised in the prior state court proceeding but were not adjudicated. In fact they were ignored for the trial court did not apply plaintiff's civil rights under Section 1983. (Refer Petitioners' Brief Argument I pp. 54-56; refer also Argument II on due process and equal protection rights violated pp. 57-60).

The Respondents' Statement of the Case at page two points out that the petitioner requested a hearing but skips the fact that Burns was denied his request for a hearing repeatedly for some twenty months after the breach of his employment contract. (See Petitioner's Brief at 60).

The Respondents' in their statement of the facts make no reference to the official action of the Minnesota State College Board after the alleged settlement agreement by letter August 26, 1971 nor the resolution of September 27, 1971. (Refer Petitioner's Brief at 26).

The President of the Board stated:

> "After reviewing the factors, and circumstances surrounding your dismissal from Bemidji State College over two years ago, the Board unanimously concludes that under the rules, regulations and practices pertaining to the governance of the Minnesota State College System, it will not grant you the hearing which you requested at the August 23, 1971 meeting."
>
> "Your dismissal was made following a determination by Bemidji State College that your professional services could no longer be utilized. In a college system such as ours such determinations must be made by the college involved. The Board has in fact delegated the power to make such determinations to make such decisions to the college to assure their effective operations."
>
> "Under these circumstances, then, the Board members have unanimously indicated their unwillingness to reverse the judgment of the college. The Board through formal resolution at its next meeting will record its collective decision not to give you a hearing." (Refer Plaintiff's Document Number 28 on file in Federal District Court).

Though well-educated it was not possible for Burns to know whether or not the dismissal for cause proceedings had actually been withdrawn. The alleged settlement agreement of December 1970 was inconsistant by its requirement that he not seek employment at the college or within the Minnesota State College System. (Refer Petitioner's Appendix E at a3).

To Burns this restrictive covenant was in conflict with what he understood was to be a positive and constructive effort. There was no consideration given for such restriction on his future professional employment. Also there was little consideration for possible college interests regarding the formation of the special-liason committee designated Science Mathematics Education Committee by such restrictive covenant on his freedom to discuss professionally his situation with regard to this special-liason committee. (Refer Petitioner's Brief Appendix E, Covenant III B at a3).

The justification for such restrictions on his future employment and what he could say professionally could not be comprehanded not knowing the reasons for his dismissal.

Because of these restrictions Burns was compelled to withdraw from the settlement and he believed that he had the option to withdraw since the agreement included the provision that:

> "IV . . . If the Agreement . . . herein cannot be made, the dismissal proceedings previously undertaken shall remain in full

> "force and effect, and each party shall retain any and all rights and claims in existence prior to entering into this Agreement." (Refer supra at e4).

After the Official Resolution of the Board after the settlement agreement in September of 1971 Burns' status was apparently that of a dismissal. Burns considered that if the Rules of the State College Board had been breached then not only his professional reputation was at stake but also possible College interests as well regarding the formation of the special-liason committee in science education.

The Minnesota State Supreme Court concluded that the Rules on Dismissal Proceedings had indeed been breached by the Board. (Refer Petitioner's Brief Appendix C, pp. c4-c6).

At the time of the Agreement the defendants were aware that Rule 17 B (2) had not been complied with by them. However, the agreement did not indicate that they had not complied with the rules rather instead the agreement put forth the contention that Burns had failed to comply with the rules not requesting a hearing within ten days of the firing. The State Supreme Court noted that the ten days do not begin to run until such time as the reasons for the dismissal are given. (Refer supra at c6).

In 1970 and 1971 generally speaking the rights of non-tenured faculty were not understood adequately. This was suggested by the Minnesota State Supreme Court in their opinion that:

"Substantial issues have been recently raised with regard to the employment rights of public employees and of teachers, both tenured and nontenured. Viewing Minn. Reg. SCB 17 (B) (2) with the various principles established in Olson v Regents of University of Minnesota, 301 F. Supp. 1356 (D. Minn. 1969), and Board of Regents v Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed. 2d. 548 (1972), we can only conclude that under the standards of those cases due process rights may be violated by failure to provide a hearing upon request." (Refer supra c6).

The college officials were aware that Burns' contract of employment had not been officially terminated by the Board since Rules 17 B (2) specified that when a dismissed non-tenured faculty member requests a hearing termination shall not occur until such time as a hearing is conducted. The Administration of the College System in June of 1970 prior to the settlement agreement action had detailed information from the Minnesota State Supreme Court regarding the application of this rule in the Anderson v Bellows Case, Southwest State College, 179 N.W. 2d. 307, (June 1970) which concluded that all employment contracts or personnel changes require official action by the State College Board.

While it is not the realm of the Court to determine the facts at issue, such facts have not been available to the trial court since these Respondents have obstructed the securing of such information, with almost unlimited legal counsel and help at their disposal thru the Attorney General's Office, State of Minnesota -- in the State proceedings the judge quashed a subpoena on the defendant

Chancellor and in the Federal District Court by obtaining a summary judgment to prevent them from having to answer the plaintiff's forty-seven interrogatories.

For example a possible fact at issue is that technically the settlement agreement was not approved by the Board officially since the person signing the agreement was not authorized at the time of the agreement to sign for the Board as provided in the Minnesota Statutes 69, Section 15.06 (2) which requires the designated official's signature to be on file in the Secretary of State's Office.

Professor Burns' due process rights have been violated not only by the Board's failure to comply with its own rules but as well by the Courts. And he has been involved in an unconscionable settlement agreement.

- - - - - - - - - - -

The settlement agreement as sanctioned by the Respondents and the failure of the State Courts to consider his civil rights results in an unreasonable encroachment on his professional rights and privileges as conferred by other established and recognized schools and universities and in particular that of the University of Florida which conferred the doctorate prior to his initial employment in the Minnesota State College System, now a University System. It goes beyond reasonable employment practice.

Such unconscionable settlement as sanctioned demands that a hearing be conducted in order to fairly consider Professor Burns' professional reputation and standing in the academic community. And it goes without saying that such hearing is necessary for the proper consideration of possible college and university interests. It is in compliance with the rules that those important interests of the colleges and universities are to be protected.

While it can be stated that the U.S. Constitution provides for full faith and credit thru-out the judicial system it can be stated equally that full faith and credit is essential thru-out the established and recognized American educational system. It is in relation to the important work of the schools, colleges and universities in the United States that our most fundamental and important resource enters into the commerce of the business world in marketable skills, talents and initiatives.

Where there exists breaches of the commencement covenants as conferred by established and recognized schools it is essential that appropriate due process hearing procedures be provided to protect these most fundamental property interests of Americans today. Where there is an indication that constructive initiatives have been provided it is altogether imperative that a person's democratic rights be protected by suitable due process procedures.

- - - - - - - - - - -

CONCLUSION

In view of the foregoing considerations and the Petitioner's Reasons and Arguments as outlined in his brief the Court should grant certiorari so that those important professional matters both the individual's and those of the university might be fairly treated. In this instance it is Burns' professional reputation and standing in the academic community. Also to be considered are the college and university interests over and beyond Burns' professional status.

Certiorari should therefore be granted that is consistant with the Court's previous rulings and its interpretation of the United States Constitution and its application of the Congressional enactment in Title 42 Section 1983.